

**NELSON COUNTY APPEAL OF A DECISION OF THE ZONING ADMINISTRATOR
TO THE BOARD OF ZONING APPEALS (BZA)**

A citizen may appeal a zoning ordinance decision of the Zoning Administrator to the Board of Zoning Appeals (BZA). The BZA is a five-member quasi-judicial board appointed by the Circuit Court Judges of the 24th Judicial Circuit Court to hear these appeals.

To appeal, a citizen must file a *Petition for Appeal to the Board of Zoning Appeals* with the Zoning Administrator. The BZA will meet and hear the appeal and decide if a variance should be granted. A variance is granted by the BZA upon the affirmative vote of at least three of its members.

The BZA is restricted by certain requirements of state law in granting variances. State law does not allow the BZA to grant a variance as a personal accommodation, or because no one objects, or because it accomplishes what one might consider a "fair" result.

In order to grant a variance under Virginia law, the BZA must find: (1) that the strict application of the zoning ordinance would produce undue hardship; (2) that even if the hardship exists, it is not shared generally by other properties in the same zoning district and vicinity; and (3) that authorization of a variance will not be of substantial detriment to adjacent properties and the character of the zoning district will not be changed by its grant.

State law provides that a variance is appropriate only when the application of the zoning ordinance to a particular piece of property is adversely affected by reason of the "exceptional narrowness, shallowness, size or shape of a specific piece of property", and the application of the zoning ordinance "would effectively prohibit or unreasonably restrict the use of the property" or cause "a clearly demonstrable hardship approaching confiscation."

The applicant must produce evidence (petition, map, if available, and oral presentation) of the three factors mentioned above at the hearing before the BZA. The Supreme Court of Virginia has stated that a variance is a remedy that is properly applicable only in rare circumstances. The Court has narrowly interpreted the provisions of Virginia law to amount only to a "constitutional safety valve" which avoids confiscation by the operation of the zoning ordinance alone.

Applicants should provide as much detail as possible in the Petition that is provided to you by the Zoning Administrator.

**PROCEDURE FOR FILING A PETITION
OF APPEAL TO THE BOARD
OF ZONING APPEALS**

A petition of appeal to the Board of Zoning Appeals involving a variance or other appeal of a decision of the Zoning Administrator must be accompanied by the following information:

1. A completed *Petition for Appeal to the Board of Zoning Appeals* form;
2. A filing fee, in accordance with the fee schedule, to cover the costs of legal advertisements in the newspaper, mailing of letters to adjacent property owners, and review by the County staff;
3. A plat (legal size paper maximum) drawn to scale showing the lot or property described in the application, location of existing and proposed buildings, alterations, or additions, all setback lines, and the limits of any variance requested;
4. A location sketch of any property involved showing nearest road intersection(s), and a list of adjoining property owners.
5. Any applicable forms and/or documents, such as a certificate of elevation.

The above information must be submitted and fee paid to the Zoning Administrator before the required legal advertisements, meeting of the Board, and public hearing can be scheduled.

PETITION FOR APPEAL TO THE BOARD OF ZONING APPEALS
Nelson County, Virginia

1. PETITIONER(S):

Name: _____
 Address: _____

2. PROPERTY OWNER(S):

Name: _____
 Address: _____

3. TYPE OF APPEAL (CHECK ONE):

- ☐ **VARIANCE TO SECTION _____ OF THE ZONING ORDINANCE**
☐ **INTERPRETATION OF SECTION _____ OF THE ZONING ORDINANCE**
☐ **OTHER _____ (SPECIFY) (IF "OTHER", DO NOT ANSWER QUESTION #5)**

Explanation and description of reason(s) for appeal:

4. LOCATION AND CHARACTERISTICS OF ANY PROPERTY INVOLVED WITH APPEAL:

- a. Address of property: _____
 b. Subdivision: _____
 c. Official tax map number: _____
 d. Acreage of property: _____
 e. Present use: _____
 f. Present zoning classification: _____
 g. Zoning classification of surrounding properties: _____

5. Will the appeal, if granted, have any effect on present or future street right-of-ways, setbacks, and other improvement plans? (Refer to the County, Nelson County Service Authority, Virginia Department of Transportation - Amherst Office, if applicable.) If yes, give explanation.

6. The Code of Virginia (Sec. 15.2 - 2309) and State case law contain specific requirements for the granting of a variance. Variance requests issued for reasons not related to these criteria constitute an invalid application of Board authority. The fact that the Board feels it is doing "justice", the request is considered necessary and essential by the applicant for personal, health, or other reasons, or the request is not opposed by nearby property owners does not, when standing alone, constitute valid reasons for the granting of a variance. The State Code requires that no variance shall be authorized unless the Board finds:

- a. The strict application of the ordinance would produce undue hardship.

- b. The hardship is not generally shared by other properties in the same zoning district and the same vicinity, i.e. the zoning requirement from which the variance is sought would not similarly restrict other properties which are zoned the same as the subject property.
- c. The authorization of the requested variance would not be a detriment to adjacent properties nor would the character of the zoning district be changed, if granted, i.e., the request would not reduce the amount of protection generally provided between adjoining properties under the existing Zoning Ordinance or would not permit a use or development which would be permitted if the property were rezoned to another zoning classification.
- d. The condition of the property or the proposed use is not of such a recurring nature in the community as to make the adoption of a general Zoning Ordinance amendment practical which would otherwise permit the proposed use by right, i.e., the variance would not have the effect of resolving recurring zoning problems shared generally by other property owners in the same district or vicinity.
- e. Approval of this and other similar requests would not have the effect of ultimately nullifying the zoning restriction.
- f. Financial loss is not the only hardship that would be inflicted by the Zoning Ordinance requirement but is a factor to be considered.
- g. The hardship is not self-inflicted in any manner.

The granting of the requested variance would alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience.

Identify and explain the hardship involved:

Under State law, applicants must show how their request meets the following criteria for the granting of a variance:

- a. The exceptional narrowness, shallowness, size or shape of the property, its topographic conditions, or other extraordinary conditions of the property, or use of immediately adjacent property effectively prohibit or unreasonably restrict the use of such property in a manner consistent with Zoning Ordinance requirements.

Identify any such special physical conditions associated with the property or adjacent property that justify the granting of a variance:

7. AFFIDAVIT:

The undersigned petitioner certifies that this petition and the foregoing answers, statements, and other information herewith submitted are, in all respects, true and correct to the best of their knowledge and belief. Also, the petitioner gives permission for members of the Board of Zoning Appeals and County Staff to visit and view the subject property.

Signature: _____ Date: _____
 Mailing Address: _____

Variance # _____

Telephone Number(s): _____

8. AFFIDAVIT PROPERTY OWNERS: (If not petitioner[s])

The undersigned property owner(s) has authorized the submission of this Petition:



TO BE COMPLETED BY BOARD OF ZONING APPEALS STAFF

Completed application and \$_____ fee received on _____. Public Hearing
notice published on _____ and _____ for hearing on _____.

Date of Decision: _____ Decision: _____
